

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 20-12345-mg

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5 In the Matter of:

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7 THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK,

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9 Debtor.

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

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16 April 25, 2023

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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

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25 ECRO: KS

1 HEARING re Hearing Using Zoom for Government RE: First  
2 Interim Application For Allowance of Compensation By Lerman  
3 Senter PLLC as Special FCC Counsel for the Period From  
4 October 14, 2022 Through January 31, 2023 (Docket  
5 Nos. 1804, 1944).

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7 HEARING re Hearing Using Zoom for Government RE: Seventh  
8 Interim Application For Allowance of Compensation and  
9 Reimbursement of Expenses By Berkeley Research Group, LLC As  
10 Financial Advisor For The Period From October 1, 2022  
11 Through January 31, 2023 [Docket No. 1806, 1944].

12  
13 HEARING re Hearing Using Zoom for Government RE: Seventh  
14 Interim Application For Allowance of Compensation and  
15 Reimbursement of Expenses By Burns Bair LLP as Special  
16 Insurance Counsel For The Period From October 1,  
17 2022 Through January 31, 2023 [Docket No. 1809, 1944, 1493,  
18 1540, 1578, 1631, 1682, 1721, 1894, 1944].

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1 HEARING re Hearing Using Zoom for Government RE: Seventh  
2 Interim Application of Sitrick and Company, Inc. for  
3 Professional Services Rendered and Reimbursement of Expenses  
4 Fees for Professional Services Rendered and Disbursements  
5 Incurred for the Period of October 1, 2022 to January 31,  
6 2023 [Docket No. 1815, 1944, 1476, 1477, 1504, 1517, 1518,  
7 1542, 1619, 1620, 1660, 1694, 1698, 1699, 1788, 1944].

8  
9 HEARING re Hearing Using Zoom for Government RE: Seventh  
10 Application for Interim Professional Compensation for Reed  
11 Smith LLP, Special Counsel, period: 10/1/2022 to 1/31/2023  
12 [Docket No. 1827, 1944, 1472, 1482, 1507, 1521,  
13 1525, 1551, 1616, 1638, 1667, 1668, 1687, 1752, 1944, 1953].

14  
15 HEARING re Hearing Using Zoom for Government RE: Seventh  
16 Interim Application For Allowance of Compensation and  
17 Reimbursement of Expenses By Pachulski Stang Ziehl & Jones  
18 LLP as Counsel to the Official Committee of  
19 Unsecured Creditors for the Period From October 1, 2022  
20 Through January 31, 2023 [Docket Nos. 1803, 1813,  
21 1944, 1492, 1539, 1578, 1630, 1682, 1742, 1944)

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1 HEARING re Hearing Using Zoom for Government RE: Jones Day's  
2 Seventh Interim Application for Allowance of  
3 Compensation for Services Rendered and Reimbursement of  
4 Actual and Necessary Expenses Incurred During  
5 Retention Period from October 1, 2022 to January 31, 2023  
6 [Docket No. 1823, 1944, 1494, 1496, 1519, 1536,  
7 1544, 1571, 1622, 1639, 1710, 1716, 1732, 1944].

8  
9 HEARING re Hearing Using Zoom for Government RE: Second  
10 Interim Fee Application of Jefferies LLC for Compensation  
11 for Professional Services Rendered and Reimbursement of  
12 Expenses Incurred as Investment Banker for the Debtor  
13 and Debtor in Possession from October 1, 2022 to and  
14 Including January 31, 2023 [Docket No. 1841, 1944,  
15 1945].

16  
17 HEARING re Hearing Using Zoom for Government RE: Seventh  
18 Interim Application of Alvarez & Marsal North America LLC  
19 for Allowance of Compensation for Services Rendered and  
20 Reimbursement of Expenses Incurred as Restructuring  
21 Advisor to the Debtor During the Period from October 1, 2022  
22 Through January 31 [Docket No. 1824, 1944, 1491, 1496, 1538,  
23 1544, 1623, 1639, 1717, 1732, 1944, 1953].

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1 HEARING re Hearing Using Zoom for Government RE: Nixon  
2 Peabody LLP with Summary Sheet for Seventh Interim  
3 Application of Nixon Peabody LLP as Special Counsel to the  
4 Debtor from October 1, 2022 through January 31,  
5 2023 [Docket No. 1825, 1944, 1457, 1478, 1499, 1500, 1511,  
6 1532, 1557, 1559, 1677, 1715, 1732, 1840, 1944].  
7

8 HEARING re Hearing Using Zoom for Government RE: Fourth  
9 Application for Interim Professional Compensation for  
10 Services Rendered and Reimbursement of Actual and Necessary  
11 Expenses Incurred for Forchelli Deegan Terrana LLP,  
12 Special Counsel, period: 10/1/2022 to 1/31/2023 [Docket No.  
13 1828, 1944].  
14

15 HEARING re Hearing Using Zoom for Government RE: Third  
16 Application for Interim Professional Compensation of Binder  
17 & Schwartz LLP for the Period from October 1, 2022 through  
18 January 31, 2023 [Docket No. 1829, 1843, 1944,  
19 1484, 1515, 1533, 1564, 1621, 1670, 1713, 1842, 1944].  
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1 HEARING re Hearing Using Zoom for Government RE: Fourth  
2 Application for Interim Professional Compensation for  
3 Services as Future Claims Representative for Robert E.  
4 Gerber, Other Professional, period: 10/3/2022 to 1/31/2023  
5 [Docket No. 1833, 1837, 1944, 1434, 1528, 1531, 1579, 1582,  
6 1610, 1613, 1661, 1699, 1724, 1820, 1944].  
7

8 HEARING re Hearing Using Zoom for Government RE: Fourth  
9 Application for Interim Professional Compensation for  
10 Services as Financial Advisor to Future Claims  
11 Representative for Michael R. Hogan, Other Professional,  
12 period: 10/3/2022 to 1/31/2023 [Docket No. 1834, 1944, 1529,  
13 1580, 1611, 1662, 1727, 1821, 1944].  
14

15 HEARING re Hearing Using Zoom for Government RE: Fourth  
16 Application for Interim Professional Compensation for  
17 Services as Counsel to Future Claims Representative for  
18 Joseph Hage Aaronson LLC, Other Professional, period:  
19 10/3/2022 to 1/31/2023 [Docket No. 1835, 1837, 1944, 1530,  
20 1581, 1612, 1663, 1725, 1822, 1944].  
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7 MICHELLE MCMAHON  
8 BRITTANY MITCHELL MICHAEL  
9 ANDREW MINA  
10 JAMES MOFFITT  
11 CHARLES MOORE  
12 KAREN MORIARTY  
13 BENJAMIN ROSENBLUM  
14 PATRICK STONEKING  
15 RAY STONG  
16 RICHARD TOLLNER  
17 NORA ANNE VALENZA-FROST  
18 JAMES J. VINCEQUERRA  
19 GREG ZIPES  
20 BRENDA L. ADRIAN  
21 TIMOTHY BURNS  
22 ELIZABETH CATE  
23 ANGELA CIPOLLA  
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1 P R O C E E D I N G S

2 THE COURT: All right. Good afternoon, everybody.  
3 This is Judge Glenn. We're here in the Diocese case with  
4 respect to a large number of Fee Applications. I have -- as  
5 we go through, I have questions about a few of them, but  
6 we'll deal with them as we go through. So, let's begin.  
7 So, let's start with the Jones Day Application.

8 MR. BUTLER: Yes, sir. This is Andrew Butler with  
9 Jones Day for the Debtor.

10 THE COURT: Good afternoon.

11 MR. BUTLER: Good afternoon.

12 THE COURT: All right, go ahead.

13 MR. BUTLER: Your Honor, we have an Interim Fee  
14 Application set for today. An agenda for this Interim Fee  
15 Application was filed at Docket No. 2033. Our Interim Fee  
16 Application is Docket No. 1823, and it covers October 1,  
17 2022, through January 31, 2023. If Your Honor has any  
18 further questions about the Interim Fee Application, I'm  
19 happy to answer --

20 THE COURT: Yeah, let me -- I'm just going through  
21 my notes. All right, so the Fee Application seeks approval  
22 for \$3,826,536.75 in fees and \$75,428.26 in expenses. Is  
23 that correct, Mr. Butler?

24 MR. BUTLER: That's correct, Your Honor.

25 THE COURT: All right. I don't have any

1 questions. Does anybody else wish to be heard with respect  
2 to the Jones Day Application? All right.

3 MR. ZIPES: Your Honor --

4 THE COURT: Go ahead.

5 MR. ZIPES: I'm sorry. Your Honor, Greg Zipes  
6 with the U.S. Trustee's Office.

7 THE COURT: Hi, Mr. Zipes.

8 MR. ZIPES: My -- good afternoon. My office has  
9 reviewed these Fee Applications and there's an understanding  
10 with the parties that we're going to be doing a more fulsome  
11 review at the end of the case. But the case has now lasted  
12 quite a bit of time and I may be speaking with the parties  
13 about doing a more fulsome review with the next Fee  
14 Application as opposed to waiting till the end of the case,  
15 and I just wanted to let the Court know that's the case.  
16 There's -- my office is reviewing matters.

17 THE COURT: All right. Thank you. Anybody else  
18 want to be heard? All right. The Application is approved.

19 MR. BUTLER: Thank you, Your Honor.

20 THE COURT: All right. Let's go to the Seventh  
21 Interim Application of Reed Smith. It's ECF Docket 1827.

22 MR. JAVIAN: Good afternoon, Your Honor. Aaron  
23 Javian, Reed Smith, LLP. Reed Smith acts as Special  
24 Insurance Counsel to the Debtors. We're seeking approval of  
25 our fees during the fee period in the amount of \$714,248.50

1 and our expenses in the amount of \$3,576.61, for a total of  
2 \$717,825.11. If Your Honor has any questions, I'm happy to  
3 respond or answer them.

4 THE COURT: Does anybody else wish to be heard  
5 with respect to the Reed Smith application? I'm just  
6 reviewing my notes. Give me a moment. All right. It's  
7 approved, as well.

8 MR. JAVIAN: Thank you.

9 THE COURT: Next is Alvarez & Marsal North  
10 America, LLP. The application is ECF 1824, seeks fees of  
11 \$435,787.50 and expenses of \$354.18. Who wants to be heard  
12 with respect to this application?

13 MR. MOORE: Hello, Your Honor. This is Charles  
14 Moore from Alvarez & Marsal, Restructuring Advisor to the  
15 Debtor.

16 THE COURT: All right. Does anybody else wish to  
17 be heard with respect to the Alvarez & Marsal application?  
18 All right. It's approved, as well.

19 MR. MOORE: Thank you, Your Honor.

20 THE COURT: All right. Next, I have the Nixon  
21 Peabody application. It's at ECF 1825. It seeks fees of  
22 \$424,476.50 and expenses of \$516.17. Who wants to be heard?

23 MR. Good afternoon, Your Honor. Chris Desiderio  
24 from Nixon Peabody on behalf of Nixon Peabody, who acts as  
25 Special Counsel to the Debtors. No objection received. We

1 request the Application be granted.

2 THE COURT: Does anybody else wish to be heard  
3 with respect to the Nixon Peabody application? Just give me  
4 a second. All right. It's approved, as well. All right.  
5 Next, I have the Seventh Interim Application of Sitrick &  
6 Company. It's at ECF 1815. It seeks fees of \$27,233.50 and  
7 expenses of \$560.00. Who wants to be heard with respect to  
8 the Sitrick application?

9 MS. ADRIAN: Your Honor, this is Brenda Adrian  
10 with Sitrick & Company.

11 THE COURT: Okay. Let me see whether anybody else  
12 -- and I've reviewed all of these, along with my law clerks,  
13 as well. Anybody else wish to be heard with respect to the  
14 Sitrick application? All right. It's approved. Okay.  
15 Next is the Pachulski Stang Ziehl & Jones application, which  
16 is ECF Document 1803. It seeks fees of \$3,050,729.50 and  
17 expenses of \$639,143.42. Mr. Stang, are you presenting or  
18 is somebody else?

19 MR. STANG: Hello? There we go. Thank you, Your  
20 Honor. James Stang, Pachulski Stang Ziehl & Jones for the  
21 Committee and for the firm. Your Honor, those are current  
22 recitals of the amounts we're seeking. I want to just make  
23 two comments. First, we have a subcommittee of the  
24 Committee that reviews our fees on a monthly basis, so the  
25 client has direct review of those applications and invoices

1 before they get filed with the Court. Second, Paragraph 13  
2 of our application, we reference the fact that we are  
3 putting 10 percent of the fees that we collect in the case  
4 to a trust fund. It came to my attention last week that  
5 accounting -- I'll blame accounting -- was not putting those  
6 monies into a separate trust account. Since I learned of  
7 that, we have funded from interim payments we just received,  
8 almost all of the 10 percent and we will top it off with  
9 whatever monies we get from this application. And in the  
10 future, we will ensure, and accounting has been instructed,  
11 that 10 percent is to go into that account as it's received.

12 THE COURT: Okay. Thank you very much, Mr. Stang.  
13 I do have -- I don't have any questions about the fees.  
14 Well, let me see, is there anybody else that wants to be  
15 heard on the Pachulski fee application? I don't have any  
16 questions about the fees, and I guess I should have said at  
17 the start, I'm not picking on you about this, Mr. Stang.  
18 You've pointed this out multiple times at hearings, this  
19 case has been incredibly expensive. The area that I do have  
20 a question about is in the expenses.

21 MR. STANG: Yes, sir.

22 THE COURT: The expenses include a line item for  
23 outside services and that, which totaled \$586,788.50. It's  
24 over 91 percent of the expenses. So, this category of  
25 "outside services" came up at a prior hearing and I had a

1 colloquy with Ms. Dine about it and so, what I'm going to  
2 refer to is in the hearing transcript of December 16, 2022,  
3 at Pages 16 and 17. And at the time of that last hearing,  
4 the largest item was the same category of "outside  
5 services", and I raised questions about it at that hearing.  
6 And here's the colloquy, Ms. Dine said, "There was an Order  
7 entered earlier in the case allowing for the retention of  
8 certain experts without going through the application  
9 process and having the fees passed through counsel. And so,  
10 the outside services, I think, in this application period  
11 are for Claro Group, who is our Claims Advisor. They are  
12 reviewing the claims and evaluating the claims for us, as  
13 well as Rock Creek Advisors, who is a firm that addresses  
14 pension and benefit issues and they have been looking, with  
15 us, at the Debtor's pension and welfare plans." Ms. Dine  
16 went on from there, but -- and I responded, "It would be  
17 helpful if there was some description provided so that you  
18 know would inform me better about what it's for. When I see  
19 a big sticker price on an item, whether it's described as  
20 "outside services" or exactly what it is, in the case the  
21 Debtor, it was "hosting charges" was the description of it.  
22 It would be helpful to me, you have more of a better  
23 description, okay?"

24 And Ms. Dine responded, "Absolutely, Your Honor,  
25 and frankly, when I was looking at the application in

1 preparation for the hearing, I was thinking that probably we  
2 should have explained that, and we'll do that in the  
3 future." Let me just say that the reference, in my remarks,  
4 to the Debtor's expense report, which includes "hosting  
5 services", and that was explained to me what that was, it  
6 was data, obviously. So, your firm started to include more  
7 details in its bills for other categories of expenses, but  
8 the details for expenses within "outside services" is still  
9 lacking. For instance, across the Interim Fee Applications  
10 and invoices, it appears that your firm paid the following  
11 amounts simply to "invoices" for the following services  
12 without further description, totaling hundreds of thousands  
13 of dollars. I mean, you know, I won't give you the specific  
14 amounts now. So, these amounts for "outside services" are  
15 being paid or eclipsing the amounts for many of the retained  
16 professionals in the case that are subject to filing fee  
17 applications.

18 And while Ms. Dine stated that your firm is  
19 procedurally responsible for fronting these costs and filing  
20 its own application, under the current procedural  
21 arrangements, you know, I want to know more. This is huge  
22 dollars, and I don't know if -- I don't expect you -- if you  
23 can give it to me, that's fine. If not, I'd like to see it  
24 in a subsequent -- I don't know what -- what the Order that  
25 Judge Chapman entered that permitted this. I never would

1 have, but that's -- you know, I'm not going back on what  
2 Chapman -- what Judge Chapman did. But it's a huge number,  
3 Mr. Stang and I need to have more transparency about what it  
4 is. If -- you know, if it involves confidential  
5 information, for example, I don't have a problem about  
6 redacted copies being filed on the docket and with me  
7 getting unredacted copies. But I'm just uncomfortable, and  
8 I don't know, Mr. Zipes, whether this is an office your  
9 office has looked at or not, and I don't mean to be picking  
10 on you about it. I raised this before with Ms. Dine and I'm  
11 just not satisfied.

12 MR. STANG: Your Honor. I'm sorry, I don't want  
13 to cut in front of Mr. Zipes, but --

14 THE COURT: No, you -- but go ahead, Mr. Stang.  
15 Go ahead.

16 MR. STANG: Your Honor, I'm -- I haven't gotten  
17 the message yet from Ms. Michael or Ms. Dine but within 10  
18 days, we will submit to you a more detailed description of  
19 the services provided by Claro, now known as Stout through a  
20 corporate acquisition and the Rock Creek folks.

21 THE COURT: There was also -- there was also a big  
22 amount for CBRE. Was that real estate related?

23 MR. STANG: Yes, that's regarding real estate  
24 title records and valuations.

25 THE COURT: Okay.

1 MR. STANG: But we'll do the same for them, as  
2 well.

3 THE COURT: Okay.

4 MR. STANG: And Your Honor, do you want to see  
5 their invoices, or do you want a narrative description of  
6 what they've done with a breakout of the dollar amount for  
7 each one?

8 THE COURT: Let me ask Mr. Zipes about whether  
9 your office has looked at this or not.

10 MR. ZIPES: Your Honor. Good afternoon, Greg  
11 Zipes. We haven't looked at the specific invoice, but we  
12 have had general discussions and sometimes the issue is that  
13 there's ongoing litigation and there's a concern that  
14 there's a desire to be somewhat vague and sometimes it's  
15 more vague than other times.

16 THE COURT: Yeah. I don't have a problem, you  
17 know, and that's why I say, I'm open to have this stuff  
18 redacted if there's a reasonable argument. Yeah, I think  
19 unredacted copies have to be given to the U.S. Trustee's  
20 office, and unredacted copies have to be given to me. But  
21 to the extent appropriate, I don't have a problem about  
22 redacted copies going -- it was just big dollar numbers and  
23 I'm not -- I don't mean to be faulting anybody. I raised  
24 this before and I'm just not there yet on it.

25 MR. STANG: Your Honor, I would ask for this.

1 Allow us to give you, on the record, on the docket, a  
2 narrative of the description of what each is doing, without  
3 invoices. Submit to you -- I don't know if the right word  
4 is "seal" or off the record, the invoices, copy U.S. Trustee  
5 with those, as well, and then, if you feel that invoices  
6 should be filed on the docket redacted, we'll certainly do  
7 that. I don't know if the Debtor or other professionals are  
8 also paying in a sense, "off the books", to professionals,  
9 but --

10 THE COURT: We'll find a different term to apply  
11 for that, okay?

12 MR. STANG: Okay. Fair enough. "Off-line",  
13 maybe? You know, if it's the amount of dollars that are  
14 involved here that drew your attention to us, that's fine.  
15 I just want to make sure the goose and the gander are  
16 treated the same.

17 THE COURT: Yeah. If the amount -- let me go back  
18 a second. Hold on. You know, when I -- because I -- the  
19 Debtor's application, the largest expense item on this one  
20 is "hosting charges", \$54,201.87, and I asked about an  
21 explanation about it before. So, I understand what that is.  
22 So, there -- let's put it -- the total expenses that the  
23 Debtor is seeking in this application is \$75,428.26. The  
24 biggest item is "hosting charges", which I got a  
25 satisfactory explanation for. So, I don't think -- I mean,

1 if there were similar items, I would certainly be asking you  
2 about the same thing because I did before, okay.

3 MR. STANG: Our expenses clearly dwarf those.

4 THE COURT: Yeah.

5 MR. STANG: And so, we will, within 10 days, Your  
6 Honor, submit -- this is what I'm proposing, submit to you  
7 and -- well, file a narrative for each of the professionals  
8 that compose the major components of those expenses and then  
9 submit to Chambers and to the U.S. Trustee, unredacted  
10 copies of invoices.

11 THE COURT: Let me -- I didn't go back to look at  
12 the exact amounts from the last Interim Fee Application. Is  
13 it of similar -- do you remember or know whether it's a  
14 similar magnitude?

15 MR. STANG: I don't, but we can do it for both  
16 periods, Your Honor.

17 THE COURT: Let me suggest this, and I don't want  
18 to delay, particularly if you've -- what Ms. Dine said, that  
19 you were fronting these costs, and I'm not looking to have  
20 your firm out of pocket for it. What I'm going to do is,  
21 I'm going to approve now all the other expenses. Subtract  
22 out the \$586,788.50. Let me see the -- you know, put on the  
23 docket a narrative -- brief narrative and send me the --  
24 send the Court and the U.S. Trustee the invoices and I'll  
25 act on it promptly. I'm not looking to have your firm out

1 of pocket for this amount or any other amount. So, I'm not  
2 looking --

3 MR. STANG: (indiscernible)

4 THE COURT: -- to punish anybody for that, so --

5 MR. STANG: But we certainly aren't -- but we  
6 aren't taking your comments to be in that -- in that tenor.  
7 So, that's fine, Your Honor.

8 THE COURT: And what I would suggest is, if the  
9 "outside services" item remains a large sticker item going  
10 forward, provide the narrative with the application and  
11 then, to the extent you need, to file the invoices redacted,  
12 okay?

13 MR. STANG: Okay, got it.

14 THE COURT: Okay. All right. So, again, I'm  
15 approving your Fee Application. The Application for Fees  
16 and the Application for Expenses, holding back for,  
17 hopefully, a very prompt resolution by the Court, that  
18 "outside services" item. And I won't keep you waiting very  
19 long.

20 MR. STANG: And Your Honor, I wrote down  
21 \$586,788.50.

22 THE COURT: That's what I have written down.

23 MR. STANG: Okay. Thank you.

24 THE COURT: You can double check it because I'm  
25 going from notes I have in front of me and I could have made

1 a mistake when I did it, so --

2 MR. STANG: That accounting department that didn't  
3 do the 10 percent, I will ask them to double check.

4 THE COURT: Okay. All right. Thanks. Okay. So,  
5 next is the Seventh Interim Fee Application of Burns Bair,  
6 LLP as Special Insurance Counsel to the Committee. And  
7 they're seeking fees of \$411,679.25 and expenses of  
8 \$11,848.82.

9 MR. BAIR: Your Honor, this is Jesse Bair from  
10 Burns Bair, Special Insurance Counsel for the Committee.  
11 Your Honor recited those numbers correctly. If you have any  
12 questions, we're happy to respond.

13 THE COURT: Okay. I do have some comments for  
14 you. I'm -- does anybody else want to be heard with respect  
15 to this, the Burns Bair, LLP application? Okay. I'm going  
16 to approve it but listen to this carefully because it's been  
17 raised before, okay. The application does not provide a  
18 summary chart that breaks out its billings by project  
19 category as specified by the Southern District Amended  
20 Guidelines. This makes it very difficult to calculate  
21 whether the preparation of your fee application fits within  
22 -- well, I'll refer to it as the "Mesa Air Guidelines",  
23 actually a case that Mr. Stang's firm represented the Debtor  
24 in, where I dealt with, what's a reasonable -- what's the  
25 range for fees for preparing fee applications? So, the

1 admission of a group summary chart is an issue that your  
2 firm was reminded of during the most recent Omnibus Hearing  
3 on December 16, 2022. You can look at the transcript, at  
4 Pages 17 and 18, yet you still fail to include the chart.  
5 It won't happen again, meaning, I won't approve your fees  
6 again if you don't do what the Rules require.

7 MR. BAIR: Yeah, thank you Your Honor. The charts  
8 we included were intended to address your concern, but --

9 THE COURT: Well, it didn't.

10 MR. BAIR: -- it appeared that we misapprehended  
11 what the concern was. And so, we will discuss with the  
12 professionals on our end and make sure that our submission  
13 includes the correct chart going forward.

14 THE COURT: Okay. All right. The next on my list  
15 is the Berkeley Research Group, ECF 1806. Who is appearing  
16 for them?

17 MR. STRONG: That me, Your Honor. Ray Strong on  
18 behalf of Berkeley Research Group. During the period -- the  
19 reporting period, Berkeley is asking for approval of interim  
20 fees of \$573,973.50 and expenses of \$32,042.00. We've  
21 received no objections. I'm happy to answer questions --

22 THE COURT: \$32.42 were the expenses, right?

23 MR. STRONG: Correct.

24 THE COURT: Okay. All right. Anybody else --  
25 anybody have anything they want to say about this

1 application? All right. It's approved.

2 MR. STRONG: Thank you, Your Honor.

3 THE COURT: Okay. Next is Forchelli Deegan

4 Terrana, LLP. The application is ECF 1828. It seeks fees  
5 of \$17,612.50 and no expenses.

6 MR. LUCKMAN: Good afternoon, Your Honor. Gerard  
7 Luckman, Forchelli Deegan Terrana, Special Real Estate  
8 Counsel to the Debtor.

9 THE COURT: Nice to see you again.

10 MR. LUCKMAN: Good seeing you too, Your Honor.

11 THE COURT: Even if it's --

12 MR. LUCKMAN: It's been a while.

13 THE COURT: Even if it's across the screen. All  
14 right. Anybody have anything they want to say about this  
15 application? All right. It's approved.

16 MR. LUCKMAN: Thank you, Your Honor.

17 THE COURT: Thanks, Mr. Luckman. All right. All  
18 right. Next is the Binder & Schwartz Third Interim Fee  
19 Application as Counsel to Special Mediator Arthur Gonzalez.  
20 The application is ECF 1829.

21 MR. FISHER: Good afternoon, Your Honor. Eric  
22 Fisher on behalf of Binder & Schwartz. The application is  
23 in the amount of \$7,107.30 and no expenses and there's no  
24 objection to the application.

25 THE COURT: All right. I -- I -- I have a problem

1 -- your -- Mr. Fisher. Correct me if I'm wrong, okay. The  
2 time spent preparing -- well, for both preparing the fee  
3 application and the retention application was 43 percent of  
4 the total billed in the interim period. The Mesa Air  
5 decision that I referred to earlier, quite some time ago, I  
6 said that the range -- I didn't come up with a precise  
7 range, but I said that fees incurred in preparing fee  
8 applications should generally not exceed the 3 to 5 percent  
9 range of the application. And what I said is, the larger  
10 the fee application, the smaller the percentage, the higher  
11 the -- the smaller the fee application, it may be a higher  
12 percentage. And I separate out the time preparing fee  
13 applications, from retention applications because they're  
14 not the same. The time preparing the retention application  
15 is recoverable. But when we reviewed the individual time  
16 records, it shows that the majority of the time that was  
17 billed is, indeed, spent on the fee applications. And  
18 here's what's bothering me, there's 12 hours of time charged  
19 preparing fee applications and 5 hours for the substantive  
20 work. And maybe I'm getting it wrong and please correct me  
21 if I'm wrong, but it just -- I mean, it can't cost more to  
22 prepare a fee application than what you're charging for the  
23 work you're doing.

24 MR. FISHER: Your Honor, you're not -- you're not  
25 getting it wrong. The value of the work on the substantive

1 matters exceeds the value of the time spent on the fee  
2 application, and I appreciate the problem, and I think part  
3 of the problem is that the substantive time that we devote  
4 to this matter is important, but minimal. And I will tell  
5 the Court that before submitting these applications, we  
6 actually do write off a lot of the time associated with  
7 preparing the fee applications. But I'm open to any  
8 solutions to this problem that the Court proposes, including  
9 writing off substantially more of the fee application time.

10 THE COURT: Look, the reason -- I don't know  
11 whether you ever read my Mesa decision, I repeated the same  
12 reasoning in a Borders Books opinion I wrote quite some time  
13 ago, again, and I've really been consistent throughout -- in  
14 applying the range. Look, from my standpoint, it makes  
15 practical good sense. I mean, you can't -- the amount that  
16 you can bill for preparing fee applications, which is  
17 recoverable, has got to be fraction of what you're putting  
18 in time. I mean, you can do it -- look, I recognize that  
19 when I get fee applications for relatively small amounts,  
20 such as the ones that you're submitting, it -- you know, I  
21 don't look at those applications quite the same, for the  
22 same level of detail that I would get in a big application.  
23 Mr. Zipes, I don't know whether -- did you -- has your  
24 office looked at this issue here or --

25 MR. ZIPES: Your Honor, I don't want to pick on

1 Mr. Fisher, but we had an issue at the beginning of the case  
2 with retention -- time spent on the retention application.  
3 And I think, as he stated, he struggles with the fact that  
4 his firm doesn't have a lot of hours dealing with this and I  
5 -- I don't have a great solution for that. I mean, it's --  
6 it is -- it is what it is. And I -- so, Your Honor, I think  
7 we were deferring this issue because --

8 THE COURT: All right.

9 MR. ZIPES: -- there might be -- there might be  
10 months where he's putting in substantially more time and the  
11 percentages might true up a little bit more. But I do think  
12 it's a live issue, Your Honor. I'm not --

13 THE COURT: Let me just put it this way -- look,  
14 what Mr. Fisher and his firm have done in other, much more  
15 substantial cases in front of me, can't be what leads me to  
16 what the result should be here. I'd just say, you know,  
17 I've had considerable experience with Mr. Fisher and his  
18 firm and have only the strongest, positive feelings about  
19 the quality of their work, and the fairness in everything  
20 they've done. So -- but, okay -- here's what I'm going to  
21 do. I'm going to approve fees in the amount of \$5,000.00.  
22 You've got to -- you know, Mr. Fisher, I know that Judge  
23 Gonzalez has a more limited role in this case, and unless  
24 that changes, your fee applications are not going to -- are  
25 going to pale in comparison to the fees of the other

1 professionals in the case. I just -- you just need to look  
2 at this more carefully going forward. I certainly  
3 understand, as I suggested, that if a fee -- and I recognize  
4 this, the smaller the total fee application, the higher the  
5 percentage is going to be, but it's okay because you have to  
6 do fee applications. But I'm going to leave it to you and  
7 your colleagues' professional judgment to figure out how to  
8 do this in a way that is appropriate. It just can't be that  
9 I'm approving more for preparing the fee application than  
10 for the work. It just -- it just can't happen. Okay?

11 MR. FISHER: Understood, Your Honor, and I --

12 THE COURT: All right. Submit an Order that  
13 approves your fees in the amount of \$5,000.00. You had no  
14 expenses that you were seeking, okay?

15 MR. FISHER: Correct.

16 MR. ZIPES: Your Honor, it's Greg Zipes. Can I --  
17 can I just make a suggestion?

18 THE COURT: Absolutely.

19 MR. ZIPES: I know that the applications need to  
20 be filed every 120 days and that's one of the rules that  
21 we're dealing with. I do think that, perhaps, if the Court  
22 is willing to consider this, that fee applications be filed  
23 maybe every six months and notwithstanding the rule and --

24 THE COURT: Well, I'm not going to do that with  
25 the Jones Day or Pachulski (indiscernible)

1 MR. ZIPES: No, absolutely. Absolutely, Your  
2 Honor. And I'm, sort of, suggesting this on the fly, as  
3 well. But there are different ways of dealing with it.

4 THE COURT: All right. You know, Mr. Zipes, why  
5 don't you talk with -- because there are some others that,  
6 you know -- I have the Joseph Hage Aaronson application for  
7 \$6,810.00 and no expenses. You know, it's the Future Claims  
8 Representative's counsel. There are -- I think that the  
9 Lerman Senter application was seeking \$6,544.39 and I'll  
10 deal with some other issues about that one, but I'm open to  
11 -- maybe, Mr. Zipes, you can come up with a proposal that,  
12 for applications totaling less than, figure out what the  
13 dollar is, they can be filed less frequently, okay?

14 MR. ZIPES: We'll do that, Your Honor. I don't  
15 want to make that a practice, but it --

16 THE COURT: No.

17 MR. ZIPES: -- it makes sense in a case like this  
18 --

19 THE COURT: Yeah.

20 MR. ZIPES: -- where there's a few of these that  
21 need to be reviewed.

22 THE COURT: Okay. All right. All right. So, the  
23 next application is the Lerman Senter, PLLC application  
24 seeking fees of \$6,544.39 and no expenses. Who is appearing  
25 with respect to that application? Anybody?

1 MS. MICHAEL: Your Honor, this is Brittany Michael  
2 from Pachulski Stang Ziehl & Jones on behalf of the  
3 Committee. I believe, given the small amount at issue, no-  
4 one from Lerman is on the line, but -- and we can attempt to  
5 answer questions or communicate questions.

6 THE COURT: Sure. The fee application -- here's  
7 the -- the major problem we spotted. The fee application,  
8 which, again is ECF 1804, is missing 9 hours in invoice  
9 entries and does not break out the hours into the required  
10 billing categories. They're going to have to -- I'm not  
11 approving the Lerman Senter application. They're going to  
12 need to resubmit it. That doesn't have to be held until the  
13 next fee hearing, but I'm not approving this one. I mean,  
14 it's just -- you know, the fee application is only seeking  
15 \$6,544.39, but it's missing 9 hours of -- you know, it  
16 doesn't have the invoice entries, it doesn't break down  
17 hours. We have requirements, so have a discussion with  
18 them, would you please?

19 MS. MICHAEL: Understood, Your Honor. We will.

20 THE COURT: All right. Next is the Fourth Interim  
21 Application of the Future Claims Representative. It's --  
22 the application is ECF 1833. It seeks fees of \$74,340.00  
23 and expenses of \$197.85. Mr. Gerber, are you presenting?

24 MR. GERBER: Yes, Your Honor, with your consent,  
25 I'll present, not just on my own behalf, but also for my

1 Financial Advisor, Michael Hogan and my firm, as well.

2 THE COURT: All right. Let me just say, the Hogan  
3 application, which is ECF 1834 seeks \$80,537.50 in fees and  
4 expenses of \$2,775.34. And the Joseph Hage Aaronson, LLC  
5 application is ECF 1835, and it seeks fees of \$6,810.00 and  
6 no expenses. Go ahead, Mr. Gerber. (indiscernible)

7 MR. GERBER: That's right, and --

8 THE COURT: You could do them in order, or you can  
9 do all three of them.

10 MR. GERBER: All those numbers are correct, Your  
11 Honor, and with your consent, I'll speak only to answer  
12 questions. There were no objections to any of the three.

13 THE COURT: Does anybody want to be heard with  
14 respect to those three applications? Okay. I don't have  
15 any questions, so I'm approving the Fourth Interim  
16 Application of the Future Claims Representative, fees of  
17 \$74,340.00, expenses of \$197.85, the Fourth Interim  
18 Application of Michael R. Hogan, ECF 1834, approving fees of  
19 \$80,537.50, expenses of \$2,775.34 and the Fourth Interim Fee  
20 Application of Joseph Hage Aaronson, ECF 1835, fees of  
21 \$6,810.00 and no expenses. So, those three are approved and  
22 you can submit the Orders and they'll be entered. Okay?  
23 Thanks very much. Okay. The next is the Second Interim  
24 Application of Jefferies, LLC. It's at ECF Docket No. 1841.  
25 It seeks fees of \$200,000.00 and expenses of \$50,000.00.

1 Who is presenting for Jefferies?

2 MS. SCHRAG: Good afternoon, Your Honor. Sarah  
3 Schrag of Dentons U.S., LLP on behalf of Jefferies.

4 THE COURT: Okay. Let me just flip in my notes.  
5 Okay, so the Jefferies fees seeking \$200,000.00 represents  
6 their monthly fees, \$50,000.00 per month for the four-month  
7 periods pursuant to the engagement letter. And the  
8 \$50,000.00 in expenses is the maximum allowable under the  
9 engagement letter. And the application includes the  
10 certification of Richard Morgner, it's Exhibit A to the  
11 application. Does anybody have any questions about the  
12 Jefferies application? Okay. It's all approved. I would  
13 just note that Jefferies expenses included the fees for  
14 Sidley Austin in connection with Jefferie' engagement,  
15 that's Exhibit B to the application. And Jefferies provided  
16 detailed invoices for its payments to Sidley Austin, and  
17 although Jefferies does not provide an actual total for its  
18 expenses, a review of Exhibit B reveals that Jefferies out-  
19 of-pocket expenses totaled more than \$50,000.00 during the  
20 interim period, but the expenses are capped by the  
21 engagement letter to the \$50,000.00. Do I have that right,  
22 Ms. Schrag?

23 MS. SCHRAG: Yes, that's right, Your Honor. Thank  
24 you.

25 THE COURT: Okay. So, if -- the Jefferies

1 application is approved.

2 MS. SCHRAG: Thank you, Your Honor.

3 THE COURT: Okay. So, that deals with all of the  
4 applications today. Let me -- just give me a moment,  
5 please. Mr. Butler, anything that you want to raise?

6 MR. BUTLER: No, Your Honor. We'll coordinate  
7 among the professionals and have a proposed Order submitted  
8 to Chambers.

9 THE COURT: Mr. Stang, anything you want to raise?

10 MR. STANG: No, Your Honor. Thank you.

11 THE COURT: All right. Anybody else want to be  
12 heard?

13 MR. ZIPES: Your Honor, Greg Zipes with the U.S.  
14 Trustee's Office. Just very quickly --

15 THE COURT: Sure.

16 MR. ZIPES: -- the status of this -- of the fee  
17 applications is that there are no hold backs, generally, for  
18 the period prior to the current interim fee applications.  
19 And I -- given that there are uncertainties in the case, my  
20 office may be re-examining the holdback issues with the  
21 parties. It's not a pleasant subject for them necessarily,  
22 but it may be necessary given the status of the case. It's  
23 --

24 THE COURT: I agree.

25 MR. ZIPES: (indiscernible)

1 THE COURT: I agree. But none of the  
2 professionals should be in for -- you know, or surprised.  
3 There needs to be adequate notice if your office is going to  
4 seek to impose a holdback requirement.

5 MR. ZIPES: Absolutely.

6 THE COURT: Okay. We'll leave it at that today.  
7 All right. We are adjourned.

8 (Whereupon these proceedings were concluded at  
9 2:40 PM)

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I N D E X

RULINGS

	Page	Line
Fee Applications Granted	13	18
Alvarez & Marsal Motion Approved	14	18
Nixon Peabody Motion Approved	15	4
Sitrick & Company Motion	15	14
Pachulski Stang Ziehl & Jones Fee Motion	22	21
Granted in Part		
Seventh Interim Fee Application of	24	16
Burns Bair, LLP as Special Insurance		
Counsel Granted		
Forchelli Deegan Terrana, LLP Fee Motion	26	15
Granted		
Binder & Schwartz Third Interim Fee	30	13
Application as Counsel to Special Mediator		
Arthur Gonzalez Granted		
Fourth Interim Application of the Future	33	21
Claims Representative Motion Granted		
Jefferies Application Granted	34	12

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: June 8, 2023